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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963.

No. 773

GENERAL RADIO COMPANY,
Petitioner,

vs.

THE SUPERIOR ELECTRIC COMPANY,
Respondent.

PETITION FOR REHEARING

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During this Court's consideration of the petition herein, the Court of Customs and Patent Appeals reaffirmed its adherence to the test of invention of the *Eibel Process* case,[1] rejected by the Third Circuit in the present cause.

The lack of responsible leadership in the patent field in this Supreme Court has thus left the inventive community, the Patent Office and the bar floundering about in an uncharted sea without captain or rudder.

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1. *In re Gonser*, 140 U.S.P.Q. 415, 418 (C.C.P.A., February 13, 1964).

When the Fifth Circuit recently *followed Eibel*, this Supreme Court late last year refused to give its approval or disapproval.[2]

When the Third Circuit frankly *discarded Eibel* in the present cause—in direct conflict with the District Court of the District of Columbia as to the same invention—this Supreme Court has again refused to give its approval or disapproval.

And now, when the patent appeals court in the meantime disagrees with the Third Circuit and insists *Eibel* is still the governing law, will this Supreme Court continue—because of preconceived personal prejudices of the individual Justices—irresponsibly to ignore its clear duty to stabilize the law?

If Justice Goldberg[3] is correct that the function of the Supreme Court is to act as "National Schoolmaster", have we not the right to expect the schoolmaster to lead and guide and not close his eyes to confusion and chaos?

This Supreme Court's indifference to patents has reduced patent litigation to mere forum shopping. In the present case, indeed, a Connecticut corporation sued a Massachusetts corporation in a New Jersey forum where it could secure a District Judge who has never sustained a patent and a Court of Appeals noted for its hostility towards patents.

Does this Supreme Court really believe it is championing individual rights by insisting on the right of an individual to eat at a lunch counter, while at the same time sanctioning the destruction of the inventive fruits of that

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2. *Hahn & Clay v. A. O. Smith Corporation*, certiorari denied 11 L. Ed. 2d 274, December 9, 1963.

3. "Create or Perish", M.I.T. Press, 1964, p. 112, Robert H. Rines.

individual's brain, evolved after years of sacrifice and privation?

The stealing of money is a recognized crime; but is the stealing of ideas to remain sanctioned by our "National Schoolmasters"?

Reconsideration and granting of the petition are requested.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the Rules of this Court.

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